

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Denova Environmental, Inc.
2610 North Alder Avenue
Rialto, California 92377
EPA ID. No. CAT080022148

Gene S. Van Houten, and

Robert V. Cole.

DTSC Docket Nos. HWCA 00/01-
4015 and HWCA 01/02-3010
OAH No. L-2001100345

STIPULATION AND ORDER

Health and Safety Code
Sections 25187

The California Department of Toxic Substances Control (Department) and Respondents Denova Environmental, Inc. and Robert V. Cole (hereinafter referred to as Settling Respondents) enter into this Stipulation and Order (Stipulation) and agree as follows:

1. SUMMARY OF FACTS

1.1 On or about September 7, 2001, the Department issued the Revocation Order and Amended Enforcement Order with Imminent and Substantial Endangerment Determination, Docket No. HWCA 00/01- 4015 (Order I), against Denova Environmental Inc. (Denova), Robert V. Cole (Mr. Cole), and Gene Van Houten. Order I cited Denova, Mr. Cole and Mr. Van Houten for numerous violations of the Hazardous Waste Control Law (HWCL), Health and Safety Code section 25100 et seq., and assessed penalties for the HWCL violations. A true and correct copy of Order I is attached as Exhibit 1 to this Stipulation.

1.2 On or about September 21, 2001, Settling Respondents filed Notices of Defense requesting a hearing on Order I. Mr. Van Houten did not file a Notice of Defense, and therefore Order I is final as to Mr. Van Houten.

1.3 On or about March 29, 2002, the Department and Settling Respondents executed a Partial Stipulation and Order (Partial Stipulation) that resolved the issues in Order I, with the exception of the individual liability of Mr. Cole and the amount of the penalty assessed against the Settling Respondents for the violations cited in Order I. A true and correct copy of the Partial Stipulation is attached as Exhibit 2 to this Stipulation.

1.4 On or about July 31, 2002, the Department issued Enforcement Order, Docket No. HWCA 01/02-3010 (Order II), against Settling Respondents. Order II cited the Settling Respondents for numerous HWCL violations, and assessed penalties for the HWCL violations. A true and correct copy of Order II is attached as Exhibit 3 to this Stipulation.

1.5 On or about August 13, 2002, the Settling Respondents filed Notices of Defense requesting a hearing on Order II.

1.6 A dispute between the parties exists regarding: a) the individual liability of Mr. Cole and the amount of the penalty assessed in Order I; and b) the violations alleged in Order II, the Settling Respondents' liability for the violations, and the penalties assessed in Order II.

1.7 The parties wish to avoid the expense of further litigation and wish to achieve a prompt resolution of the disputed claims in furtherance of the public interest.

2. SETTLEMENT OF DISPUTED CLAIMS

2.1 Jurisdiction: Jurisdiction exists pursuant to Health and Safety Code section 25187.

2.2 Waiver of Hearing: Settling Respondents waive any right to a hearing on Orders I and II.

2.3 Scope of Settlement: This Stipulation shall constitute full settlement of the Settling Respondents' liability for penalties for: a) the HWCL violations alleged in Orders I and II; and b) any other HWCL violations against Denova that are known to the Department prior to the effective date of this Stipulation, except

for any hazardous waste fees owed by Denova, and penalties owed pursuant to Stipulation and Order No. HWCA 98/99-4011A.

2.4 This Stipulation shall not limit the Department from taking appropriate enforcement action against the Settling Respondents concerning HWCL violations not covered by this Stipulation. Specifically, this Stipulation shall not resolve the Settling Respondents' liability for penalties: a) that are owed pursuant to Stipulation and Order No. HWCA 98/99-4011A; b) for violations of the HWCL that are not known to the Department as of the effective date of this Stipulation; or c) for violations that occur or continue after the effective date of this Stipulation, including violations of closure requirements and financial assurance requirements in California Code of Regulations, title 22, sections 66265.111 and 66265.143. Nor shall this Stipulation resolve the Settling Respondents' alleged obligation to pay hazardous waste fees pursuant to Health and Safety Code section 25205.1 et seq.

2.5 Nothing in this Stipulation shall constitute or be construed as a satisfaction or release of Settling Respondents from liability or claims under other state and federal statutes, including the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. section 9601 et seq., and the Hazardous Substance Account Act (HSAA), Health and Safety Code section 25300 et seq.

2.6 This Stipulation does not resolve any other pending enforcement action by other government agencies.

3. ADMISSIONS

3.1 Denova admits that it is liable for the violations alleged in Orders I and II.

3.2 Mr. Cole admits that the violations alleged in Orders I and II occurred, but Mr. Cole does not admit liability for the violations.

4. LIABILITY OF SETTling RESPONDENTS

4.1 Penalty Liability of Mr. Cole: Mr. Cole agrees to pay the Department \$600,000, for penalties for violations cited in Orders I and II.

4.2 Penalty Liability of Denova: Denova agrees to pay the Department \$ 2,482,064 for penalties for violations cited in Orders I and II.

4.3 Judgments and Liens for Penalty Liability: This Stipulation shall constitute a final administrative order imposing penalties for violations cited in Orders I and II, as follows: a) Mr. Cole shall pay penalties in the amount of \$600,000; and b) Denova shall pay penalties in the amount of \$ 2,482,064. Except as provided in paragraph 5.3.3 (Review of Inability to Pay Determination), Settling Respondents waive their right to judicial review of the penalty determination in this final administrative order. Pursuant to Health and Safety Code section 25184.1, the Department may apply to the appropriate Superior Court for judgments against the Settling Respondents for the penalties set forth in this paragraph. The Settling Respondents stipulate to entry of judgment in favor of the

Department to collect penalties from the Settling Respondents in the amounts set forth in this paragraph. The Department may record judgment liens against the Settling Respondents in the amount of the judgments.

4.4 Release of Judgment and Liens: The Department shall release Mr. Cole from liability for any judgment entered and any lien recorded pursuant to paragraph 4.3 of this Stipulation, if all of the following conditions are met: a) Mr. Cole makes the payments in accordance with paragraph 5.1.1; b) Settling Respondents provide the Department with full financial disclosure in accordance with paragraph 5.2.1; and c) the Department does not make a determination pursuant to paragraph 5.3.2, increasing the penalties to be paid by Mr. Cole, or in the event that the Department makes a determination pursuant to paragraph 5.3.2, Mr. Cole makes the payments in accordance with paragraph 5.3.4.

5. SCHEDULE FOR COMPLIANCE

Settling Respondents shall comply with the following:

5.1 Penalty Payments:

5.1.1 Within 30 days of the effective date of this Stipulation, Mr. Cole shall pay the Department \$ 250,000, for penalties for the violations cited in Orders I and II.

5.1.2 Mr. Cole's check(s) shall be made payable to the Department of Toxic Substances Control, and shall be delivered to:

Department of Toxic Substances Control
Accounting Office
1001 I Street
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent:

To: Phillip Blum, P.E., Acting Branch Chief
Task Force Support and Special Investigations
Branch
1011 North Grandview Avenue
Glendale, California 91201

To: Bonnie Wolstoncroft
Office of Legal Counsel
Department of Toxic Substances Control
P. O. Box 806
Sacramento, California 95812-0806

5.1.3 If Mr. Cole fails to make the payments in accordance with paragraph 5.1.1 and/or paragraph 5.3.4 of this Stipulation, Mr Cole shall within 30 days of receipt of the Department's notice of non-payment, pay to the Department the full amount of the penalties owed by Mr. Cole pursuant to paragraph 4.1 (\$600,000).

5.1.4 If Mr. Cole fails to make the payments as required by this Stipulation, Mr. Cole agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

5.2 Full Financial Disclosure:

5.2.1 Within 90 days of the effective date of the Stipulation, Settling Respondents agree to provide the Department with full disclosure regarding the financial condition of the

Settling Respondents. For purposes of this Stipulation, "full disclosure" includes, but is not limited to: a) on or before April 1, 2003, Settling Respondents shall provide the Department with the documents listed in Exhibit 4 to this Stipulation, in accordance with the instructions in Exhibit 5; and b) within 90 days of the effective date of the Stipulation, Mr. Cole shall appear for a deposition taken by the Department regarding the financial condition of the Settling Respondents. The Department may request that Mr. Cole bring documents to the deposition. Mr. Cole reserves the right to seek a protective order in response to the Department's request for documents.

5.2.2 In the event that the documents listed in Exhibit 4 to this Stipulation are not in the possession of the Settling Respondents or the agents, employees, and/or representatives of the Settling Respondents, the Settling Respondents shall make good faith efforts to obtain such documents. Within 30 days of the effective date of the Stipulation, the Settling Respondents shall provide the Department with documentation of the location of the documents and the good faith efforts taken by the Settling Respondents to obtain the requested documents that are not provided to the Department. In determining whether Settling Respondents have complied with paragraph 5.2.1 of this Stipulation, the Department shall consider whether Respondents have made a good faith effort to obtain the documents listed in Exhibit 4.

5.2.3 In the event that Settling Respondents fail to provide the Department with full disclosure of Settling Respondents' financial condition as required in paragraph 5.2.1 above, Mr. Cole shall be jointly and severally liable with Denova for the entire penalty owed pursuant to paragraph 4.2 of this Stipulation.

5.3 Ability to Pay Determination:

5.3.1 Mr. Cole has asserted that he is unable to pay more than \$250,000, in penalties to the Department.

5.3.2 Within 90 days of the date that Settling Respondents provide the Department with full disclosure pursuant to paragraph 5.2.1, the Department may issue a written determination that the information provided by the Settling Respondents or other information obtained by the Department fails to support Mr. Cole's assertion that he is unable to pay more than \$250,000. The Department's determination shall be prepared in accordance with the United States Environmental Protection Agency's Ability to Pay Guidance and Models listed in Exhibit 6 to this Stipulation (USEPA ATP Models).

5.3.3 Review of Ability to Pay Determination: Within 15 days of receiving the Department's written determination pursuant to paragraph 5.3.2, Mr. Cole may request a hearing before the Office of Administrative Hearings to review the Department's written determination rejecting Mr. Cole's inability to pay assertion. The parties agree that if Mr. Cole requests a hearing on the Department's written determination, Mr. Cole shall

have the burden of proving: a) that the Department's written determination regarding Mr. Cole's ability to pay assertion was not prepared in accordance with the USEPA ATP Models; or b) that the Department used inappropriate data in preparing the written determination. The hearing shall be conducted in accordance with the applicable provisions of the Administrative Procedure Act, Government Code section 11500 et seq. The final agency decision on Mr. Cole's inability to pay assertion shall be subject to judicial review pursuant to Government Code section 11523.

5.3.4 In the event that the Department issues a written determination rejecting Mr. Cole's inability to pay assertion, and if no review is timely requested pursuant to paragraph 5.3.3, Mr. Cole shall pay to the Department penalties in the amount of Mr. Cole's ability to pay as determined by the Department in accordance with the USEPA ATP Models, but not to exceed \$600,000, within 30 days of receipt of the written determination. If Mr. Cole timely requests review of the Department's written determination pursuant to paragraph 5.3.3, Mr. Cole shall pay to the Department penalties in the amount of Mr. Cole's ability to pay as determined by the Department in accordance with the USEPA ATP Models, but not to exceed \$600,000, within 30 days of the effective date of a final agency decision upholding the Department's written determination. Any penalties paid by Mr. Cole pursuant to paragraph 5.1.1, shall be deducted from the total amount of penalties owed by Mr. Cole pursuant to this paragraph.

5.3.5 Effect of Ability to Pay Determination: The final agency decision on Mr. Cole's assertion that he is unable to pay penalties in excess of \$250,000, shall not be binding on the Department in any future enforcement or cost recovery action.

6. OTHER PROVISIONS

6.1 Submittals: All submittals from Settling Respondents pursuant to this Stipulation shall be sent to:

Phillip Blum, P.E., Acting Branch Chief
Task Force Support and Special Investigations Branch
1011 North Grandview Avenue
Glendale, California 91201

6.2 Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Settling Respondents in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Settling Respondents shall be construed to relieve Settling Respondents of their obligation to obtain such formal approvals as may be required.

6.3 Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Stipulation fails to comply with the Stipulation or fails to protect public health or safety or the environment, the Department may:

a. Modify the document as deemed necessary and approve the document as modified; or

b. Return the document to Settling Respondents with recommended changes and a date by which Settling Respondents must submit to the Department a revised document incorporating the recommended changes.

6.4 Compliance with Applicable Laws: Settling Respondents shall carry out this Stipulation in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

6.5 Liability: Nothing in this Stipulation shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Settling Respondents, except as provided in this Stipulation. Notwithstanding compliance with the terms of this Stipulation, Settling Respondents may be required pursuant to federal or state laws to take further actions as are necessary to protect public health or welfare or the environment.

6.6 Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Stipulation is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts

relating to the Site; reviewing the progress of Settling Respondents in carrying out the terms of this Stipulation; and conducting such tests as the Department may deem necessary. Settling Respondents shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Stipulation.

6.7 Sampling, Data, and Document Availability: Settling Respondents shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Settling Respondents or on Settling Respondents' behalf in any way pertaining to work undertaken pursuant to this Stipulation. Settling Respondents shall allow the Department and its authorized representatives to take duplicates of any samples collected by Settling Respondents pursuant to this Stipulation. Settling Respondents shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Stipulation. All such data, reports, and other documents shall be preserved by Settling Respondents for a minimum of six years after the conclusion of all activities under this Stipulation. If the Department requests that some or all of these documents be preserved for a longer period of time, Settling Respondents shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Settling Respondents shall notify the Department in writing at

least six months prior to destroying any documents prepared pursuant to this Stipulation.

6.8 Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Settling Respondents or related parties in carrying out activities pursuant to this Stipulation, nor shall the State of California be held as a party to any contract entered into by Settling Respondents or their agents in carrying out activities pursuant to this Stipulation.

6.9 Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Settling Respondents pursuant to this Stipulation are incorporated in this Stipulation upon approval by the Department.

6.10 Extension Requests: If Settling Respondents are unable to perform any activity or submit any document within the time required under this Stipulation, the Settling Respondents may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

6.11 Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

6.12 Additional Enforcement Actions: By agreeing to this Stipulation, the Department does not waive the right to take

further enforcement actions, except to the extent provided in this Stipulation.

6.13 Penalties for Noncompliance: Failure to comply with the terms of this Stipulation may subject Settling Respondents to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

6.14 Parties Bound: This Stipulation shall apply to and be binding upon Settling Respondents and their officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Stipulation.

6.15 Effective Date: The effective date of this Stipulation is the date it is signed by the Department.

6.16 Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

IT IS SO STIPULATED AND AGREED.

DENOVA ENVIRONMENTAL INC.

Dated:February 19, 2003

By:[Original signed by]
Robert V. Cole
Acting President
Denova Environmental, Inc.

Dated:February 19, 2003

By:[Original signed by]
Robert V. Cole
Acting President
Denova Environmental, Inc.

ROBERT V. COLE

Dated:February 19, 2003

By:[Original signed by]
Robert V. Cole

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Dated:February 24, 2003

By: [Original signed by]
Phillip Blum, Acting Branch Chief
Task Force Support and Special
Investigations Branch
Department of Toxic Substances
Control